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| 10/812,743 | 03/30/2004 | Ariel Shapiro | U 015097-8 | 5507 |
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| LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023 | | | LEFF, STEVEN N | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|---------------------------------------|
| Office Action Summary | Application No. 10/812,743 | Applicant(s) SHAPIRO, ARIEL |
| | Examiner STEVEN LEFF | Art Unit 1794 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 January 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-13 and 16-29 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-13 and 16-29 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/1648)
Paper No(s)/Mail Date 1/23/08

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/17/08 has been entered.

Claim Objections

- Claim 1 is objected to because of the following informalities: The comma on line 7 between the words "element" and "located" should be removed for clarity. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- Claims 1-13, and 16-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6740346 in view of Esty (RE 28892). Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of patent '346 fully encompasses all of the limitations with respect to claim 1-11 of application 10/812743 except for the limitation with respect to providing atmosphere treatment. However since claim 1 of the '346 patent teaches a sealable atmosphere aperture which is in communication with the interior of the bag, and since claim 2 teaches that the bag is gas impervious it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to teach providing atmosphere treatment in view of Esty (RE 28892) for its art recognized and applicant's intended purpose of providing a specific atmosphere in order to provide an extended shelf life of the fresh produce as is taught by Esty (RE 28892).

In addition it is noted that present claims 1-13 and 16 are drawn to a method for packaging produce while patent claims 17-29 are drawn to a package of produce. However given that the method claims are drawn to a method of packaging produce where the bag in the package is filled with produce, it would have been obvious to one of ordinary skill the art to seal the produce in the bag, provide the atmosphere treatment, and then seal the bag as presently claimed thus providing a system for packaging produce .

Regarding the phrase "operative to seal said bag to said box", Esty teaches a sealing layer on the outside of the carton which is attached to the wall of the container. Esty further teaches "aperturing" the bag and sealing layer in a single operation. Regarding the word "seal", the specification does not clearly define what is meant to represent the word seal and further states "to seal the inside of the carton from the outside environment." In the instant situation reference is given to a common dictionary meaning for the word "seal" where the definition reads "anything that tightly or completely closes or secures a thing" (Dictionary.com). Thus regarding claims 1 and 17, Esty teaches a tube or tubes which are hermetically sealed to the flexible bag where the tube or tubes extend from the bag and are "alignable with and extend through the inlet and outlet openings, and are supported by the walls forming the openings of the container" (col. 2 line 8+). Thus where the sealing element is taken to be tube and where

the tube may be sealed after treatment of interior of the bag by cutting the end of the tube with a hot scissor thus melting the open ends together, it is the Office's view that the wall of the container comprises openings which are formed to "completely close or secures a thing" or secure the tube(s) to the container wall of the carton as the tubes extend there through, since the container walls provide enough support that the tubes are grasped by the walls of the container ensuring that the tube(s) maintain extended though the openings until physically removed.

With respect to claims 2, and 18 although Esty does not teach that the atmosphere treatment comprises vacuum cooling, Esty does teach that the gas treatment could be performed by evacuating the air by applying a vacuum. Esty continues by reciting that the tube can be connected to a hose, which is connected to a supply of inert gas. (col. 2 line 41+) In the instance where the tube is connected to a source which may supply cool air, Esty would thus be able to apply vacuum cooling to the container. Therefore it would have been obvious to one of ordinary skill in the art to change the source of the atmosphere treatment used to supply the inert gas to the package as taught by Esty, with a source that supplies cool air instead, thus allowing the contents of the treatment package to undergo different treatments, within the same bag, by simply changing the supply source.

With respect to claims 3, 7, 19, and 23, although Esty does not specifically recite the word "fumigation", Esty does teach that the lack of oxygen will cause any animal life included in the container to quickly suffocate and the produce will be protected from insect damage." (col. 3 line 14+) Esty further teaches the use of Nitrogen gas for its art recognized and applicants intended function of purging the bag of oxygen, thus eliminating insects within the bag containing the produce. In support of this position, an article by Stuart M. Bennett, on the website <http://www.the-piedpiper.co.uk/th7.htm> recites "fumigation is the use of a gas (not the spraying of insecticides) to destroy pests which may infest a building or a product," where "virtually anything can be fumigated." (pg. 1 col. 3) Bennett continues by teaching that various gases may be used to fumigate a product or environment, and specifically names Nitrogen. (pg. 2) It is noted that MPEP 2144.04 states that "In considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." (Thus the article by

Bennett is not cited to modify the first reference but to merely provide support for the inherent teachings of Esty.) Therefore, Esty inherently teaches all of the limitations of claims 3, 7, 19, and 23, absent any clear and convincing evidence and/or arguments to the contrary.

Therefore it would have been obvious to one of ordinary skill in the art to change the supply source from a first treatment atmosphere to a second atmosphere thus not only allowing the contents of a package to be treated different ways, but would also allow the use of the container for treating different contents with different atmospheres depending upon the different characteristics of the given food type. The claimed method of packaging agricultural produce differs from Esty only in that the atmosphere treatment applied in Esty uses inert gasses where the atmosphere treatment of the claims is drawn to a cool atmosphere.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 1-13, and 16-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although the specification teaches "vapor" relating to liquids in the form of a gas or a gas with free floating water droplets, as for example, in condensation as it taught in paragraph 0005 of the specification and claim 9 which teaches a method for packing agricultural produce wherein said flexible controlled vapor selective permeability bag comprises a gas impermeable bag, these teaching do not comply with the written description requirement with respect to the specific phrase "water vapor permeable plastic bag"

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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- Claims 17-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - Claim 17 recites the limitation "said at least one flexible controlled permeability bag" on line 4 of page 5. There is insufficient antecedent basis for this limitation in the claim and this it is unclear if this is the same as the "water vapor permeable plastic bag", if the phrase is meant to further define the "water vapor permeable plastic bag" or if the "flexible controlled permeability bag" is with respect to a different bag altogether.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

- Claims 1-13, and 16-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esty (Re 28892) in view of Wu et al. (5575418) as evidenced by Bennett <http://www.thepiedpiper.co.uk/th7.htm>.

Esty teaches a package for preserving perishable products, such as "fruits, vegetable, etc." (col. 2 line 4+). Specifically Esty teaches a communication aperture in the wall of a container (col. 2 line 8+) or box (col. 2 line 8+) that contains a "flexible impermeable bag" (col. 2 line 1+) which contains perishable products, at least one sealable localized atmosphere communication aperture formed in a wall of the box (col. 2

lines 7-8) and communicating with the interior of the bag (col. 2 lines 5-10) and a sealing element located in the at least one sealable localized atmosphere communications aperture (col. 2 lines 7-8), which is further operative to seal said bag to the box (col. 2 lines 1-10). It is noted that the sealing element is taken to be the plastic tubes.

Esty continues by teaching providing at least one bag aperture in the at least one bag in general registration with the sealable aperture (col. 2 line 1-10) where the produce is sealed inside the bag within the box while leaving the one bag aperture and the sealable communication aperture open (col. 2 lines 32-37) and the plastic tube is connected to a hose for providing atmosphere treatment within the bag (col. 2 line 42+), where sealing of the container after the atmospheric treatment is affected "by cutting of the plastic tube(s) with hot scissors" (col. 2 line 67+).

Regarding claims 1, and 17 and the phrase "operative to seal said bag to said box", Esty teaches a sealing layer on the outside of the carton which is attached to the wall of the container. Esty further teaches "aperturing" the bag and sealing layer in a single operation. Regarding the word "seal", the specification does not clearly define what is meant to represent the word seal and further states "to seal the inside of the carton from the outside environment." In the instant situation reference is given to a common dictionary meaning for the word "seal" where the definition reads "anything that tightly or completely closes or secures a thing" (Dictionary.com). Thus regarding claims 1 and 17, Esty teaches a tube or tubes which are hermetically sealed to the flexible bag where the tube or tubes extend from the bag and are "alignable with and extend through the inlet and outlet openings, and are supported by the walls forming the openings of the container" (col. 2 line 8+). Thus where the sealing element is taken to be tube and where the tube may be sealed after treatment of interior of the bag by cutting the end of the tube with a hot scissor thus melting the open ends together, it is the Office's view that the wall of the container comprises openings which are formed to "completely close or secures a thing" or secure the tube(s) to the container wall of the carton as the tubes extend there through, since the container walls provide enough support that the tubes are grasped by the walls of the container ensuring that the tube(s) maintain extended though the openings until physically removed.

Regarding claims 8, 11, 12, 24, 27, and 28 Esty teaches a sealing layer on the outside of the carton which is attached to the wall of the container. Esty further teaches

"aperturing" the bag and sealing layer in a single operation. Regarding the word "attaching" in claim 11, 12, 27, and 28, and the word "attached" in claims 8 and 24, the specification does not clearly define (on page 8 lines 1+) what is meant to represent the word attached and further states "any equivalent adherence of the bag to the carton in the region of aperture 16." In the instant situation reference is given to a common dictionary meaning for the word "attached" or "attaching", where the definition reads "to fasten, secure, or join" (Dictionary.com). Thus regarding claims 8, 11, 12, 24, 27, and 28, Esty teaches a tube or tubes which are hermetically sealed to the flexible bag where the tube or tubes extend from the bag and are "alignable with and extend through the inlet and outlet openings, and are supported by the walls forming the openings of the container" (col. 2 line 8+). The tube may be sealed after treatment of the interior of the bag by cutting the end of the tube with a hot scissor thus melting the open ends together, thus it is the Office's view that the "sealing layer" is the seal created by cutting the end of the tube with the hot scissors thus fusing the ends together. Although this step is taught by Esty after treating the produce a first time, it is the Office's view that treatment may take place through the same tube multiple times by simply cutting the tube with non-heated scissors or by inserting a sharpened tool directly through the seal thus creating an opening, followed by re-cutting the tube with hot scissors thus re-producing a seal.

Therefore, it is interpreted that with respect to the sealing layer being adhered to the wall of the container that Esty positively teaches this limitation when taking the word "attach" for its' literal and broadest reasonable dictionary definition since Esty teaches that the wall of the container comprises openings which are formed to "support" or attach the tube(s) to the container wall of the carton as the tubes extend there through, in order to provide enough support that the tubes are grasped by the walls of the container ensuring that the tube(s) maintain extended though the openings until physically removed."

Esty further teaches purging the container for a time sufficient to purge essentially all of the oxygen from the container, (col. 3 line 9+) and substituting an inert gas (col. 2 line 41+) within the treatment atmosphere.

With respect to claims 3, 7, 19, and 23, although Esty does not specifically recite the word "fumigation", Esty does teach that the lack of oxygen will cause any animal life included in the container to quickly suffocate and the produce will be protected from

insect damage." (col. 3 line 14+) Esty further teaches the use of Nitrogen gas for its art recognized and applicants intended function of purging the bag of oxygen, thus eliminating insects within the bag containing the produce. In support of this position, an article by Stuart M. Bennett, on the website <http://www.the-piedpiper.co.uk/th7.htm> recites "fumigation is the use of a gas (not the spraying of insecticides) to destroy pests which may infest a building or a product," where "virtually anything can be fumigated." (pg. 1 col. 3) Bennett continues by teaching that various gases may be used to fumigate a product or environment, and specifically names Nitrogen. (pg. 2) It is noted that MPEP 2144.04 states that "In considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." (Thus the article by Bennett is not cited to modify the first reference but to merely provide support for the inherent teachings of Esty.) Therefore, Esty inherently teaches all of the limitations of claims 3, 7, 19, and 23, absent any clear and convincing evidence and/or arguments to the contrary.

With respect to claim 12, which recites the limitation "aperturing said bag and said sealing layer in a single operation," it is the office's view that when applying the cited dictionary definition for "attach", that Esty attaches the bag to the container, adjacent the aperture in the container wall, and further apertures the bag and sealing layer in a single operation. Due to the fact that the tube is hermetically sealed to the bag, the bag is interpreted to be the bag and tube in combination where the tube has been cut by a hot scissor to form a seal. Therefore, a sealing layer is located at the end of the tube(s), where the sealing layer is supported or grasped by the container walls and when an aperture is formed in the sealing layer of the tube an aperture is consequently formed in the bag as well in a single operation.

However Esty is silent with respect to the atmosphere treatment being vacuum cooling, that the package includes a box having a plurality of ventilation apertures formed in at least one wall thereof and that the bag is a water vapor permeable bag.

Wu et al. teach "package systems for refrigerated modified atmosphere packaging of fresh fruit, vegetables and cut flowers. More particularly, this invention relates to the design, construction, closure, sealing and use of gas-permeable corrugated paperboard package systems for prolonging the storage life of fresh fruits, vegetables and

cut flowers under modified atmosphere in the headspaces of the closed package system" (abstract). The package may possess holes or ports in the end panels (col. 7 line 12), which would allow for "vacuum cooling" and/or blowing in a specific gas mixture. "Thereafter, the ports 16 are covered with high gas barrier tape 20 (see FIG. 3c which illustrates an isometric view of a MAP container with folded ends, ports and a tape over the ports), or filled with high gas barrier or gas-permeable styrofoam plugs 22 (see FIG. 3b, which 3b illustrates an end section view of a MAP container wall with a plug through the port), or plugs with vent pinholes for increased influx/efflux of MA gases. The MAP containers may also be vacuum cooled, i.e. placed in a vacuum cooled enclosed room" (col. 7 line 14+). Wu et al. further teaches that the container or box has a plurality of ventilation apertures formed in at least one wall thereof (figs. 3a and 3c ref. #17).

With respect to the paperboard package, Wu et al. teach that the paperboard package is made up of layers where one of the layers is "a layer of polymer having a gas permeability which permits gas to be transmitted in either direction through the polymer at prescribed levels." (col. 3 line 36+) "The layer of polymer can be flexible and can have selected gas and moisture permeability," (col. 4 line 13+) where the "composition of gases is selected to suit individual fresh fruit and vegetable products and their respective levels of respiration." (col. 12 line 61+)

Although Esty does not teach a water vapor permeable bag or that the flexible bag has permeability characteristics which are adapted to a given produce, Wu et al. does teach the choice of permeability of the bag is respect to the produce which is contained within for the purpose of prolonging the storage life of fresh fruits, vegetables and cut flowers under modified atmosphere where the overall permeability which permits gas to be transmitted into or out of the container is selected with respect to the respiration rate and characteristics of the fresh produce that is to be packaged in the container (col. 3 lines 35-41). Therefore, one of ordinary skill in the art would have been motivated to combine the teachings of Esty and Wu et al. in order to provide a package which not only contained the produce in a bag which allows the flow of specific gases to be transmitted into or out of the package but further to provide a bag which allows for selected moisture permeability's as is taught by Wu et al. (col. 3 lines 13-14) thus increasing the shelf life of the produce within since the bag has specific predetermined permeability's based upon the type of produce and conditions desired.

Regarding the container including a plurality of ventilation apertures, Wu et al. does teach that the layer of polymer can be flexible and can have selected gas and moisture permeability," (col. 4 line 13+) where it would have been obvious to incorporate the ventilation apertures taught by Wu et al. into invention of Esty, since both are directed to providing a specific environment with respect to a specific produce, and since Wu et al. teaches a bag that is water vapor permeable (col. 4 lines 13+) where it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have provided ventilation apertures in order to allow the escape of moisture from the container itself in order to achieve the ultimate goal of removing the water vapor from the produce which may be sensitive to water or humidity and increasing the shelf life of the produce. It would have further been desirable to provide ventilation apertures in the container or box in order to facilitate bulk transfer of gas from the container when the container is subjected to vacuum for the purpose of maintaining the refrigerated temperature of the produce uniformly throughout the packaged product while eliminating condensation within the package.

Thus since the only difference between the prior art and the claims was a recitation of relative permeability's with respect to the plastic material, and providing ventilation apertures which are needed as a function of the bag and the produce within the plastic bag, and since the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" (see MPEP 2144.04 IIA) to achieve the desired permeability of the bag and container with respect to a specific food item. Thus one skilled in the art could have substituted bags with no change in their respective functions, thus yielding predictable results to one of ordinary skill in the art at the time of the invention where combining the two methods since each of is taught by the prior art to be useful for the same purpose, flows logically from their having been individually taught in the prior art (see MPEP 2144.06), and since MPEP 2144.07 states that the selection of a known process based on its suitability for its intended use supports a *prima facie* obviousness determination.

With respect to claims 2, and 18 although Esty does not teach that the atmosphere treatment comprises vacuum cooling, Esty does teach that the gas treatment could be performed by evacuating the air by applying a vacuum. Esty continues by

reciting that the tube can be connected to a hose, which is connected to a supply of inert gas. (col. 2 line 41+) In the instance where the tube is connected to a source which may supply cool air, Esty would thus be able to apply vacuum cooling to the container. Therefore one of ordinary skill in the art would have been motivated to combine the teaching of Esty and Wu et al. and change the source of the atmosphere treatment used to supply the inert gas to the package as taught by Esty, with a source that supplies cool air instead, as is taught by Wu et al. (col. 7 lines 12+), thus allowing the contents of the treatment package to undergo different treatments, within the same bag, by simply changing the supply source.

Further, it would have been obvious to one of ordinary skill in the art to change the supply source from a first treatment atmosphere to a second atmosphere thus not only allowing the contents of a package to be treated different ways, but would also allow the use of the container for treating different contents with different atmospheres depending upon the different characteristics of the given food type. The claimed method of packaging agricultural produce differs from Esty only in that the atmosphere treatment applied in Esty uses inert gasses where the atmosphere treatment of the claims is drawn to a cool atmosphere. Claims 2, and 18 would have further been obvious over the prior art package in view of Esty, since the package is being used for performing the same function of treating a food product within a certain atmosphere, albeit in a different environment. (see MPEP 2144.07)

With regards to claims 13, 16 and 29, although Esty does not teach using an adhesive sticker, or a cap to cover the communication hole in the wall of the container, Wu et al. does teach using "high gas barrier tape" (col. 7 line 14+) or a cap (fig. 3b ref. #22). In regards to the sealing method of Esty, one would be required to have hot scissors at all time in order to guarantee sealing. However the use of an adhesive sticker or cap would allow a sealing method to be readily available without the need of an additional step of heating of the scissors in order to obtain the seal. Further, depending upon the type of plastic tube that is used in Esty, the scissors may be required to be of a specific strength, and heat in order to cut through the plastic pipe where the plastic pipe is rigid. Therefore one of ordinary skill in the art would have been motivated to combine the teachings of Esty and Wu et al. in order to provide a sealing method which did not require the use of hot scissors, thus providing a more readily available sealing method.

It is noted that present claims 1-13 and 16 are drawn to a method for packaging product while patent claims 17-29 are drawn to a package. However given that the method claims are drawn to a method of packaging produce where the bag in the package is filled with produce, it would have been obvious to one of ordinary skill the art to seal the produce in the bag, provide the atmosphere treatment, and then seal the bag as presently claimed.

Response to Arguments

Applicant's arguments with respect to claims 1-13 and 16-29 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made where it is noted that although applicant argue that neither Esty nor Wu show or suggest a method and system for packaging produce as presently claimed, applicant does not specifically state why the references do not meet the claims, and thus the examiners position with respect to Esty in combination of Wu does meet the claim limitations for reasons set forth in the prior art rejections set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN LEFF whose telephone number is (571)272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven Leff/

Examiner, Art Unit 1794

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1794